

US GENERAL TERMS AND CONDITIONS OF SERVICES

Terms and Conditions

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USA 



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These General Terms and Conditions of Services (“General Terms”) govern all EVERNEX preventive and/or corrective hardware maintenance services (“Services”) and, together with any Service Offer, Scope of Work, or other terms EVERNEX expressly references in the Order documentation (“Order Terms”), constitute the “Contract.” By ordering Services, you expressly agree to be bound by these General Terms and the Contract. Terms included in a purchase order or other customer document have no effect unless expressly agreed to by EVERNEX in writing. In case of any conflict between these General Terms and the Order Terms, the Order Terms shall prevail.

1. Definitions

“Client” or “you”:	Any purchaser of the Services or any customer of the Client benefiting from Services.
“Configuration”:	Document listing Equipment components and technical specs.
“Critical Incident”:	An Incident totally preventing the use of an essential function of the Equipment.
“Incident”:	Any failure or other issue with the Equipment preventing the normal use of all or part of the Equipment functions.
“Equipment”:	Client IT equipment to be covered by the Services, as expressly identified in the Order Terms.
“EVERNEX”:	EVERNEX USA INC, XSI, or EMCON IT, each subsidiaries of EVERNEX USA Holdco, or any of its affiliates entering into a Contract to provide Services to the Client, as identified in the Order Terms.
“Major Incident”:	an Incident impacting an essential function of the Equipment without totally preventing its use.
“Minor Incident”:	An Incident that disrupts only minor or ancillary Equipment functions.
“Order”:	Occurs when Client sends a purchase order to EVERNEX referencing an EVERNEX Service Offer number. A purchase order that does not expressly reference a Service Offer number may not be accepted.
“Party(ies)”:	EVERNEX and/or the Client.
“Scope of Work” or “SOW”:	Any document issued by EVERNEX detailing the Services.

“Service Offer”

Any document issued by EVERNEX further to a Client’s request detailing the Services and the conditions of the Services, including fees agreed between the Parties.

“Written Notice”:

Notice sent to 1005 Alderman Drive, Suite 212, Alpharetta, GA 30005, ATTN: Office of the General Counsel. Notice will be effective upon delivery. Notice by electronic mail to legal.request@evernex.com may be accepted with EVERNEX prior consent.

2. Term & Termination

The Contract effective date will be set forth in the Order Terms. Unless otherwise stated in the Order Terms, the initial term will expire after one (1) year and will auto renew for successive one (1) year periods unless either Party gives Written Notice of intent not to renew at least thirty (30) days before the renewal date. Client shall submit a purchase order for the renewal term prior to the renewal date. If a purchase order is not received after fifteen (15) days of the renewal date, EVERNEX may suspend Services. The Contract can be terminated:

- a) by either Party for material breach not remedied within thirty (30) days of Written Notice to the breaching party.
- b) by EVERNEX if Client becomes insolvent, dissolves, or files for bankruptcy.
- c) by Client: (i) for any reason with sixty (60) days’ prior Written Notice if within the first six (6) months of the Contract, or thirty (30) days Written Notice if thereafter; (ii) upon sixty (60) days’ Written Notice after a fee modification, as set forth in Section 6.2 below.

3. Services

3.1 Subject to options and limitations set forth in the Order Terms, and as further described therein, Services include:

- (a) corrective hardware maintenance to restore Equipment hardware to working order in case of an Incident.
- (b) preventive hardware maintenance to maintain Equipment hardware in working order. This can be performed either: (i) during scheduled onsite visits or (ii) remotely

through log system analysis made available by the Client or through remote access to the Equipment.

- 3.2 In the performance of the Services, EVERNEX may, in its discretion, supply or install new or equivalent spare parts to replace any defective parts. Unless as otherwise agreed or stated in the Contract, the costs of spare parts are included in the Service fees described in Section 6 below.
- 3.3 The Services only cover the Equipment and Incidents that are, in EVERNEX's reasonable determination, caused by the Equipment. If Client requests other services, EVERNEX may agree to perform such services at its then applicable rate.
- 3.4 Services levels, including response times, ("**Service Level Agreement**" or "**SLA**"), are detailed in the Order Terms.
- 3.5 EVERNEX shall be entitled to audit or inspect the Equipment prior to Services, with or without on-site visits.
- 3.6 Unless otherwise stated in the Order Terms, Services will include a six (6) week implementation time, during which EVERNEX will gather resources necessary to perform the Services (including spare parts). The SLA will not apply during this time.
- 3.7 Unless expressly agreed otherwise in writing, EVERNEX assumes ownership of all replaced components/parts related to the Services, other than any part that may contain customer sensitive data.
- 3.8 The provision of Services does not entail any transfer of know-how, technology or similar rights, whether or not protected by applicable intellectual property laws, from EVERNEX to the Client.

4. Service Modifications

Equipment may be added to or removed from the Contract upon agreement of the Parties. To remove Equipment, Client must provide sixty (60) days' prior Written Notice to EVERNEX if within the first six (6) months of the Contract, or thirty (30) days' prior Written Notice thereafter. Service charges for Equipment added to the Contract will be at EVERNEX's then-current monthly rate. Prorated invoicing or credits for removed Equipment will be provided in accordance with the Contract end date and Order Terms. Unless otherwise agreed in writing, all credits will be held and applied to any future invoices.

5. Service Limitations

5.1 Unless otherwise expressly stated in the Order Terms, the following services are excluded from the Services and, if provided by EVERNEX, will be subject to separate fees under a separate quotation or Service Offer:

- a) Software, firmware, or operating system support, installation, maintenance, or troubleshooting (unless specifically included in the applicable Order).
- b) Data backups or data recovery. **The Client is solely responsible for backing up data.**
- c) Technical modifications, including customization, configuration, or upgrades of the Equipment, other than as necessary for corrective maintenance.
- d) Installation, relocation, or reinstallation of all or part of the Equipment, including adding or removing a component, or technical feasibility analysis for such services.
- e) The support, maintenance, or replacement of any physical cabling, wiring, or telecommunications equipment external to the covered Equipment.
- f) Training of Client personnel or other third parties.
- g) Logical, administrative, or operational tasks (such as configuration loading, RAID volume expansion, partitioning, or data indexing) that fall outside the direct physical break-fix repair or replacement of failed hardware components.
- h) Services related to any Incident occurring prior to the Contract effective date.
- i) Repair of cosmetic damage or replacement of parts for aesthetic or other reasons unrelated to the functioning of the Equipment.
- k) Support or repairs relating to damages, defects, or disruptions caused by forces external to the Equipment, including but not limited to:
 - i. environmental factors such as humidity, water, power or cooling, including power or cooling failures or interruptions;
 - ii. Client's or its agents' negligence, neglect, abuse, or misuse of Equipment or non-compliance with applicable rules and regulations, including but not limited to security regulations;
 - iii. accidents or natural disasters (including fire and floods);
 - iv. malicious acts, sabotage, or robbery by Client personnel;

- v. a Force Majeure event, as defined in Section 12.5 below;
 - vi. Client's or its agents' use of spare parts, components, software, or upgrades which are not compatible with the Equipment or otherwise do not comply with the manufacturer's instructions;
 - vii. maintenance or other services, repairs, or modifications by Client or a third party other than as expressly approved and instructed by EVERNEX;
 - viii. disruptions caused by Client's servers or other infrastructure (other than the Equipment), operating systems, accessories, consumables (including batteries, cartridges, etc.) or other materials not supplied by EVERNEX.
- l) Verification that the Equipment or its environment complies with applicable rules, regulations, OEM recommendations, industry standards, or best practices.
 - m) Supply of accessories or consumables, including but not limited to batteries, additional backup tapes, transceivers, ink cartridges, or toners.
 - n) Replacement of any flash storage (SSD Drives, Flash Module, Flash Accelerator, SD card) that has reached its maximum write endurance or write cycle limit as per original vendor specifications.
 - o) Any Services at locations other than those identified in the Order Terms.
 - p) The replacement of any PCI card (graphic card, GPU card, raid card, flash card) not disclosed prior to entering into this Contract.
 - q) Performance analysis when no hardware issue is identified.

5.2 Any service requested by Client that is not included in the initial scope of the Contract shall be subject to an additional quotation or Service Offer issued by EVERNEX and accepted in writing by the Client and charged at the then applicable rate. Any additional ongoing Service will be included by reference in a Contract amendment.

6. Fees

6.1 EVERNEX will provide the Services for fixed, lump-sum fees. The fee amount and payment instructions are stated in the Order Terms, unless otherwise charged in accordance with the Contract. Fees are exclusive of any applicable sales or other taxes, which will be paid by the Client.

- 6.2** Unless otherwise stated in the Order Terms, EVERNEX reserves the right to modify fees at any time to reflect changes in market conditions, including increases in labor, materials, operating costs, or inflation. EVERNEX will notify Client of such modifications at least thirty (30) days before the new fee becomes effective. Client shall provide Written Notice to EVERNEX within thirty (30) days if it decides to terminate the Contract due to the fee modification, and such termination will be effective sixty (60) days after such notice to EVERNEX, or ninety (90) days from EVERNEX notice of the increase, whichever is later.

7. Payment Terms; Penalties

- 7.1** Unless otherwise stated in the Order Terms, fees are payable annually, in advance, within thirty (30) days of the invoice date. EVERNEX reserves the right to demand immediate payment and/or payment guarantees in the event of payment defaults or reasonable concerns regarding the Client's financial situation.
- 7.2** Late payments may be subject to interest of 1.5% per month (or the highest lawful rate, if lower) on the unpaid balance until paid in full. If Client fails to pay over sixty (60) days after invoice, EVERNEX may immediately suspend the Services, accelerate and demand payment of fees for any other services or orders (or cancel such orders), and retain any advance payment made by Client, without prejudice to any other rights or remedies that may be available to EVERNEX. Client shall reimburse EVERNEX for reasonable costs incurred in collecting overdue amounts.
- 7.3** Client shall notify EVERNEX of any dispute of an invoice within sixty (60) days of the invoice date. Otherwise, the invoice will be deemed accepted.

8. Client Obligations

During the term of the Contract, the Client shall, at its own expense, meet the following obligations. If EVERNEX is unable to perform any aspect of the Services due to Client's failure to meet any of these obligations, EVERNEX may suspend Services until the issue is resolved and will not be liable for resulting delays or failure to meet any SLA. Client agrees to:

- 8.1** Maintain the Equipment in a physical and technical environment that complies with applicable laws and regulations, manufacturer instructions, and environmental requirements, including but not limited to temperature and humidity levels;
- 8.2** Use the Equipment in a normal and reasonable manner and in accordance with best practices in the IT sector and in the Client's industry;
- 8.3** Allow EVERNEX's representative(s) full and free access to the Equipment during maintenance hours and ensure that each service intervention can take place in compliance with applicable rules and regulations, including for safety and security. In

case EVERNEX representatives are unable to safely or fully access the Equipment for any reason attributable to the Client, EVERNEX reserves the right to invoice the Client for the travel and mobilization expenses of said representatives, based on a quotation accepted in advance by the Client;

- 8.4** Ensure EVERNEX's employees and agents are treated with the same care and respect as Client's employees and agents;
- 8.5** Provide EVERNEX resources reasonably necessary for the performance of the Services, including but not limited to contact with the related technical team at EVERNEX (by telephone and computer), supply of electricity, and internet access (through a 4G/5G network access or Wifi provided by Client);
- 8.6** Before each maintenance operation, ensure that it has taken all necessary precautions to protect and backup its data, documents, programs and files, and to maintain data security and confidentiality;
- 8.7** Provide EVERNEX, prior to execution of the Contract, all relevant information necessary for the execution of the Services, including but not limited to:
 - Equipment configurations and/or system logs;
 - History of failures and incidents, including all interventions performed on the Equipment during the last 12 months prior to the effective date;
 - Physical address(es) of Equipment;
 - Any access constraints, including any credentials or clearances necessary to access Equipment.
- 8.8** Ensure that no repair or intervention of any nature is performed on the Equipment by any technical service other than EVERNEX Services during the term of the Contract;
- 8.9** Client shall cooperate fully with EVERNEX and provide all information and documentation reasonably necessary to enable the performance of Services. Prior to an on-site dispatch, Client will provide EVERNEX with any requested system logs, screenshots, or other diagnostic outputs from the Equipment to assist in determining the root cause of the failure. If the Client fails or refuses to provide this diagnostic data, EVERNEX will conduct the initial assessment on-site. EVERNEX reserves the right to invoice the Client for the travel and mobilization expenses of these representatives, based on a quotation accepted in advance by the Client. However, these expenses will not apply if the Client is unable to provide the requested data solely because the Equipment has suffered a total failure preventing the generation or extraction of such data.

9. Warranties; Limitation of Liability

- 9.1 EVERNEX will provide the Services in a good and workmanlike manner in accordance with generally accepted industry standards. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SUBSECTION, ALL SERVICES ARE PROVIDED AS-IS, AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 EVERNEX shall not be held liable for any indirect, consequential, special, punitive or exemplary damages, including, without limitation, (a) lost profits, revenue, contracts, or clients, (b) loss or corruption of data, or loss of access to data, or (c) procurement of substitute products or services arising out of or in connection with this Contract, regardless of whether such damages were foreseeable, whether any Party was advised of the possibility of such damages, or the legal or equitable theory on which the claim is based. CLIENT ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE TO BACK UP DATA AND FOR THE SECURITY AND INTEGRITY OF BACKED-UP DATA, AND THAT EVERNEX WILL NOT BE RESPONSIBLE FOR ANY LOST, CORRUPTED, OR UNAVAILABLE DATA.
- 9.3 Except to the extent direct damages are caused by EVERNEX gross negligence, fraud, or wilful misconduct, in no event shall EVERNEX's aggregate liability for damages of any kind in connection with this Contract exceed fees actually paid by the Client to EVERNEX during the twelve (12) months preceding the date of claim.
- 9.4 Any claim against EVERNEX shall be made within six (6) months from the date the cause of such claim is known or should have been known by the Client.

10. Confidentiality

The Parties acknowledge that any non-public information, data and business documentation shared in connection with the Services under this Contract is confidential, and each party will protect the other's confidential information with the same care it does its own. Except as required by law, neither party will disclose the other's confidential information without prior express consent. This confidentiality obligation shall survive termination of Contract.

11. Non-Solicitation

During the term of the Contract and for a duration of one (1) year thereafter, the Client will not solicit, hire, or employ, whether directly or indirectly, any EVERNEX employee, independent contractor, or subcontractor without EVERNEX's prior and express approval. In case of breach of this commitment, the Client shall pay EVERNEX a lump sum equal to the

gross salary or fees, less applicable taxes, paid by EVERNEX to the related employee or contractor over the last twelve (12) months.

12. Miscellaneous

- 12.1 **Amendments:** EVERNEX reserves the right to modify these General Terms, and such changes will be effective after thirty (30) days' notice to the Client and after Client's approval.
- 12.2 **Severability:** Should any provision of the Contract be held unenforceable, the other provisions remain fully in force.
- 12.3 **Waiver:** Failure or delay by either Party in invoking any provisions of the Contract shall not operate as a waiver thereof.
- 12.4 **Assignment of Contract:** The Client shall not assign or transfer its rights and obligations under this Contract without EVERNEX's prior written consent.
- 12.5 **Force Majeure:** Neither Party shall be considered in breach when performance of its obligations is delayed, disrupted, or prevented by a Force Majeure out of its reasonable control, including, without limitation, fire, strikes, floods, epidemics, natural disasters, quarantine restrictions, wars, transport disruption, or shortage of labor, raw materials, or means of production.
- 12.6 **Relationship:** The Parties are independent contractors, and one Party's employees and agents performing any Services hereunder shall not be deemed the employees or agents of the other Party.
- 12.7 **Subcontracting:** EVERNEX shall be entitled to sub-contract the performance of any of its obligations under the Contract, and to disclose Client confidential information to its subcontractors as reasonably necessary to perform the Services. EVERNEX shall require subcontractors to comply with relevant requirements of this contract, including Section 10.
- 12.8 **References:** Each Party is authorized to refer to the other Party in its commercial or marketing materials and publications. In addition, the Client grants EVERNEX the right to use its name and logo (the "References") on EVERNEX websites and/or on sales promotion materials during the term of this Contract, subject to any logo usage guidelines communicated by Client. Client may revoke such right in writing to EVERNEX at any time.

13. Governing Law; Jurisdiction

The Contract is governed by laws of the state of Delaware, without regard to conflict of laws provisions. The state and federal courts of Delaware will have exclusive jurisdiction for the resolution of any disputes arising out of the Contract.

14. Compliance with Laws; Anti-corruption

The Client represents and warrants that it will comply with all applicable laws and regulations in connection with the Contract, including, without limitation, the US Foreign Corrupt Practices Act (FCPA) and all other applicable anti-bribery laws and regulations (hereinafter collectively referred to as "Anti-Bribery Laws"). Client shall not directly or indirectly pay, offer, promise or authorize the payment of any illegal bribe, kickback, payment, gift, or thing of value from any person in connection with the Contract. If Client learns of any violation of this Section, Client will promptly notify EVERNEX. The Client shall indemnify EVERNEX, and EVERNEX shall have no liability for, any third-party claims, investigations, damages, penalties, fines, costs, or expenses arising out of or relating to any actual or alleged breach of this Section by the Client.

15. International Trade Sanctions – Export Controls

- 15.1** The Client represents and warrants that it, its subsidiaries and officers are not the subject or target of, or located in a country or territory that is the subject or target of, economic sanctions under any laws administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any other economic or trade sanctions or embargoes ("Trade Sanctions Laws"). Client further warrants on an ongoing basis that it and its customers receiving Services will comply with applicable Trade Sanctions Laws, including but not limited to those of the United Nations, the United States, United Kingdom, European Union (France included), that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
- 15.2** The Client shall provide EVERNEX with information about its customers, products and/or Services necessary for export and sanctions laws and regulations compliance. Failure to comply with these provisions, in the reasonable opinion of EVERNEX, may result in immediate termination and/or suspension, in whole or in part, of this Contract effective upon EVERNEX's notice.

16. Data Protection

The Parties will comply with their respective privacy policies and all applicable data privacy laws in connection with handling of personal data in connection with this Contract. Client will not provide EVERNEX with any personal data other than Client business contact information necessary to perform Services unless expressly agreed in writing between the Parties. Client acknowledges that, unless otherwise agreed in writing, EVERNEX does not require access to any data, including personal data, stored or processed in the Equipment in connection with the Contract, and Client is responsible for: (a) maintaining reasonable measures to avoid EVERNEX access to personal data; and (b) obtaining all necessary rights, permissions and consents associated with disclosure of any personal data to EVERNEX.